UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10

In the Matter of:

WILEN MANUFACTURING

Employer/Petitioner

and

SOUTHERN REGIONAL JOINT BOARD (WORKERS UNITED, SEIU) Case 10-RM-868

Union #1

and

UNITE HERE

Union #2

DECISION AND ORDER

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me.

On November 30, 2009, the Employer/Petitioner filed a petition in the above-captioned case. In support of its petition, the Employer provided a collective-bargaining agreement with UNITE HERE effective by its terms from February 1, 2007, through January 31, 2010, and a letter dated November 4, 2009, from Sandra Simpson, Georgia District Director, Southern Regional Joint Board, Workers United, (hereafter the Southern Region) giving notice to the Employer/Petitioner of a request to modify certain terms and conditions of the existing collective bargaining agreement.

The Employer contends the petition is related to the well-publicized split between UNITE HERE and Workers United and asserts that in light of the conflict between the signatory union on the agreement, UNITE HERE, and the recent demand by Southern Region, it is uncertain as to which labor organization it must recognize.

On December 14, 2009, I issued an Order to Show Cause asking the parties to address issues of fact and law regarding whether further processing of the petition was warranted. The Southern Region filed a response to the Order to Show Cause.[1]

Based upon the administrative investigation of this petition, I find that: (1) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction; (2) the unions involved are labor organizations within the meaning of the Act, and (3) Southern Region claims to represent certain employees of the Employer.

THE ISSUE

The issue under consideration in this matter is: Should an election be directed in this matter or should the petition be dismissed because a question concerning representation does not exist?

DECISION SUMMARY

Based on the administrative investigation conducted by the Region, including consideration of position statements submitted by the Employer/Petitioner and Southern Region before and after the issuance of the Order to Show Cause, I find that no

[1] Although provided an opportunity to do so, UNITE HERE did not present any position statement or evidence either prior to or after issuance of the Order to Show Cause. The Employer did not respond to the Order to Show Cause. However, it did provide a position statement prior to issuance of the Order to Show Cause which has been considered in this decision.

question concerning representation exists and thus conclude the petition should be dismissed. The rationale for my decision is set forth in detail below.

Background and Bargaining History

The Employer operates a facility in Atlanta, Georgia, where it manufactures and distributes cleaning products and employs approximately 30 unit employees. On June 2, 1994, the Amalgamated Clothing and Textile Workers of America was certified as the exclusive collective-bargaining representative of all production, maintenance and warehouse employees of the Employer/Petitioner at its Atlanta, Georgia facility excluding all office clerical employees, technical and professional employees, guards and supervisors as defined in the National Labor Relations Act. In 1995, the Amalgamated Clothing and Textile Workers of America merged with the International Ladies' Garment Workers Union to form UNITE. In 2004, UNITE merged with the Hotel Employees and Restaurant Employees International Union to form UNITE HERE.

On February 6, 2009, 14 joint boards, including the Southern Region, filed a complaint in United States District Court for the Southern District of New York requesting that the Court declare the UNITE HERE merger a failure and void the constitution and merger agreement. On February 20, 2009, the Southern Region voted to disaffiliate from UNITE HERE. On March 7, delegates to a special Southern Region meeting, including Local 2625 President Ivy Walters, voted 111 to 0 to disaffiliate from UNITE HERE. On March 21, 2009, delegates of the Southern Region and other disaffiliated unions formed Workers United, a new labor organization, and authorized its

executive board to affiliate with Service Employees International Union (SEIU). The next day, the executive board voted to form an autonomous conference within SEIU.

In August of 2009, Sandra Simpson[2], and Southern Region staff representative Israel Matos gave notice to the Employer/Petitioner of a request to modify the collective-bargaining agreement to reflect Worker's United, not UNITE HERE as the designated collective bargaining representative at the Employer's Atlanta facility.

By letter dated November 4, 2009, Simpson, on behalf of the Southern Region, gave notice to the Employer/Petitioner of a request to modify the collective-bargaining agreement. There is no evidence that UNITE HERE has made a similar request or demand for bargaining or for continued recognition since the disaffiliation events in February and March 2009.

Positions of the Parties

The Southern Region contends that after the Board certified the Amalgamated Clothing and Textile Workers Union as the employees' bargaining representative in 1989, the international union immediately relinquished its bargaining rights to the Southern Region. Thereafter, it asserts the international has had nothing to do with the unit. It contends Southern Region representatives have negotiated five contracts since the certification,[3] that lower level grievances have been processed by stewards and

[2] Simpson is the Southern Region North Georgia manager.

[3] The most recent agreement, effective by its terms from February 1, 2007, through January 31, 2010, states it is between the Employer/Petitioner and UNITE HERE. All prior agreements indicate they were between the Employer/Petitioner and the international unions involved i.e. either the Amalgamated Clothing and Textile Workers, or the Union of Needletrades, Industrial and Textile Employees, AFL-CIO-CLC, (UNITE). In other words, the Southern Region was not specifically mentioned in the agreements. However, Southern Region asserts that they have all been signed by

officers of Local 2625, and that higher level grievances have been handled by Southern Region representatives, assisted by representatives of the local. In addition, the Southern Region assigned a staff member from its North Georgia District (later, its Georgia District) to service the unit.

Southern Region contends that the history shows that it, and not the international, has been the bargaining representatives of the employees for 15 years. It adds that with respect to the representation of employees of the Employer/Petitioner since the disaffiliation, nothing has changed - all of the officers and representatives currently representing the employees are the same as those with whom the Employer/Petitioner has dealt with for years and who have been in contact with and representing the employees in the bargaining unit. The local has not split internally or from the Southern Region and there is no evidence that any members or unit employees support UNITE HERE. Accordingly, Southern Region asserts there is no schism or confusion as to the identity of the bargaining representative of the employees. Indeed, because UNITE HERE has had nothing to do with the unit and does not assert any 9(a) status, Southern Region contends there is no question concerning representation.

As noted above, the Employer/Petitioner did not respond to the Order to Show Cause. However, in the position statement it submitted prior to the issuance of the Order to Show Cause, the Employer/Petitioner stated that since the initial certification of representative, its relationship has remained with the same union representatives who

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employee committee members and/or by officers of the Southern Region in their capacity as officers of the Southern Region, not as officers of the international.

were part of the Southern Region who are now employed by Workers United rather than UNITE HERE. It noted that prior to the disaffiliation events, it had no occasion to differentiate between the international and the Southern Region but its actual day-to-day relationship was with Sandra Simpson and Israel Mantos of the Southern Region. Dues for employees were sent to the Southern Region. Since the disaffiliation events, the same two representatives have continued to provide representation for the bargaining unit employees notwithstanding their change of affiliation from UNITE HERE to Workers United. At no time since the dispute began has a representative of UNITE HERE claimed to represent the bargaining unit employees. Although the Employer/Petitioner believes no question concerning representation exists because the Southern Region's decision to disaffiliate from UNITE HERE has not changed the identity of the bargaining representative of its employees, the Employer asserts it is reluctant to move forward with contract negotiations without a determination as to with which labor organization it must bargain.

As stated previously, UNITE HERE failed to furnish a position statement or evidence either prior to or after the Order to Show Cause.

Analysis and Conclusion

The affiliation and/or disaffiliation of a union are internal union matters governed by the union's own internal procedures. See *Tawas Industries, Inc.*, 336 NLRB 318, 319 (2001). The Board has long held that "a labor organization's disaffiliation from the AFL-CIO does not, without more, call into question the continuity of a certified bargaining representative." *New York Center for Rehabilitation Care*, 346 NLRB 447, 447 (2006), enf. 506 F.3d 1070 (D.C. 2007). See also, *Laurel Baye/Healthcare of Lake*

Lanier, 346 NLRB 159 (2005), enf. 209 Fed Apx. 345 (4th Cir. 2006). Additionally, in *Raymond F. Kravis Center for the Performing Arts*, 351 NLRB 143 (2007), the Board decided, in light of the Supreme Court's decision in *NLRB v. Financial Institution of America Local 1182 (Seattle-First)*, 475 U.S. 192 (1986), under what circumstances a union affiliation or merger may relieve an employer of its obligation to recognize and bargain with an incumbent union. In *Raymond F. Kravis*, the Board abandoned the "due process" component of the two-prong test that it had applied in the past and decided that henceforth, the sole criteria would be "substantial continuity" in the operations of the union that sought to represent the unit employees both before and after the affiliation or merger. The Board noted that ". . . when there is a union merger or affiliation, an employer's obligation to recognize and bargain with an incumbent union continues unless the changes resulting from the merger or affiliation are so significant as to alter the identity of the bargaining representative." The Board reasoned that if it is determined that the post-affiliation union lacks a substantial continuity with the pre-affiliation union, a question concerning representation is raised and the employer is not required to recognize the union. Conversely, in cases in which there is a substantial continuity between the pre-affiliation and post-affiliation union, the post-affiliation union is largely unchanged from the pre-affiliation entity, i.e., nothing has happened to the union that would reasonably lead one to believe that the employees no longer support it, no question concerning representation would be raised. *Id.* at 447.

In assessing whether there is "substantial continuity," the Board considers whether the change is sufficiently dramatic to alter the union's identity in the context of the totality of the circumstances. *May Department Stores*, 289 NLRB 661, 665 (1988),

enf. 897 F.2d 221 (7th Cir. 1990) and *Mike Basil Chevrolet*, 331 NLRB 1044 (2000). Even though the substantial continuity test in *Raymond F. Kravis* has only been applied to affiliation and merger cases, the standards articulated in the above-cited cases would logically apply to the instant matter since disaffiliation is merely the opposite of affiliation.

Applying the substantial continuity test reveals that the decisions of the Southern Joint Board to disaffiliate from UNITE HERE, join Workers United and affiliate with SEIU do not raise a question concerning representation. These decisions have not altered the identity of the bargaining representative. The undisputed evidence reveals that the officers and representatives of the Southern Region historically representing employees have remained the same.

In conclusion, inasmuch as there has been substantial continuity in the identity of the unit employees' collective bargaining representative since the disaffiliation, because both the Employer/Petitioner and Southern Region agree that the disaffiliation events have not altered the identity of the bargaining representative, and because UNITE HERE does not continue to claim to represent the Employer/Petitioner's employees, I find that the decision of the Southern Region, supported by Local 2625, to disaffiliate from UNITE HERE does not raise a question concerning representation.

Accordingly, for the reasons set forth above,

IT IS HEREBY ORDERED that the petition be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Right to Request Review: Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you

may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 - 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on **January 28, 2010** at 5 p.m. (ET) unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:50 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, select the E-Gov tab and then click on E-filing link on the pull down menu. Click on the "File Documents" button under Board/Office of the Executive Secretary and then follow the directions. The Responsibility for the receipt of the request for review rests

exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Dated at Atlanta, Georgia this 14th day of January 2010.

/s/ Martin M. Arlook

Martin M. Arlook, Regional Director
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